



HAWAII STATE DEPARTMENT OF EDUCATION

Special Education Impartial Due Process Hearing Cover Letter

Dear Complainant:

Our goal is to ensure the rights that the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) and the Hawai'i Administrative Rules (HAR) Chapter 60 are afforded to you. You, your representing attorney, or the Hawai'i State Department of Education (Department) may request an impartial due process hearing to address an alleged violation regarding the identification, evaluation, educational placement, or provision of a free appropriate public education (FAPE) of your child.

The due process complaint must allege a violation that occurred not more than two (2) years before you or the Department knew, or should have known, about the alleged action(s). The two-year timeline does not apply to you if you could not file a due process complaint within the timeline because of the: (1) Department's misrepresentation(s) that it resolved the problem(s) that form the basis of your complaint; or (2) Department's withholding of information that was required to be provided to you under the IDEA. In a due process hearing, the parent and the school can call witnesses to testify, submit evidence, and present their respective cases to an impartial hearing officer who decides for the parties. You have the right to be represented by an attorney for your due process proceeding, but it is not a requirement for the hearing. However, if you choose to be represented by an attorney for your due process hearing, then an attorney will represent the school at the hearing.

How to Request an Impartial Due Process Hearing?

To request a due process hearing, you may elect to use the **Request for Impartial Due Process Hearing** form to assist you in filing a request. While you are not required to use this form, a request for an impartial due process hearing must provide the asterisked (*) information identified on the form in order for a request to be processed. The required information includes the following:

- The name of the student;
- The address of the student's residence;
- The name of the student's school;
- If the student is a homeless student or youth, the student's contact information and the name of the student's school;
- A description of the nature of the problem of the student relating to the proposed or refused initiation or change, including facts relating to the problem; and
- A proposed resolution of the problem to the extent known and available at the requested time.

Where to Submit the Request?

All due process hearing requests must be submitted to:

- Complex Area Superintendent (CAS): See CAS list: <https://bit.ly/ComplexAreaDirectory>
- Monitoring & Compliance Branch (MAC): specialcomplaints@k12.hi.us
- Office of Dispute Resolution: Atg.odr@hawaii.gov

An impartial due process hearing request that doesn't have the required content may be dismissed or returned to the complainant by the hearing officer. This could delay the due process proceedings, including the potential resolution of the matter. If you have questions or would like assistance filing a complaint, please contact the Monitoring and Compliance Complaints Management Program by email at specialcomplaints@k12.hi.us or via phone at (808) 307-3600. You may also contact the Special Parent Information Network (SPIN) at (808) 586-8126 or Leadership in Disabilities and Achievement of Hawaii (LDAH) at (808) 536-9684.

What happens after you file a request for an impartial due process hearing?

Notification to Parties

Upon receipt of the request, the Office of Dispute Resolution will assign an impartial hearing officer who will issue a letter informing the school, you, or the respective representing attorneys of the assignment to the case, potential conflict, and deadlines and schedule a tentative prehearing conference date.

Resolution Meeting

Within 15 calendar days (or seven days if it is a hearing involving discipline) of receiving notice of the request for an impartial due process hearing, the school must convene a meeting with you and the relevant members of the IEP Team who have specific knowledge of the facts identified in the due process complaint, including a representative who has decision-making authority on behalf of the Department. School attorneys may not participate in the meeting unless an attorney accompanies you. The purpose of the resolution meeting is to offer you and the school an opportunity to resolve issues before going to a hearing. If you and the school resolve all or part of the dispute in the resolution meeting, a written agreement will be prepared and signed by you (or an adult student) and a representative of the school who has decision-making authority. If all the issues in dispute are resolved during the 30-day resolution period, a withdrawal notification is sent to the assigned hearing officer and the Monitoring and Compliance Complaints Management Program.

If the issues are not resolved to your satisfaction within 30 days (or within 15 days of the expedited due process hearing request) of the receipt of the due process complaint, the 45-day due process hearing period will begin. 34 C.F.R. § 300.510(b)(1); HAR § 8-60-64.

Can the Resolution Meeting be Waived?

The resolution meeting can be waived if both the parent and school agree to do so in writing. The meeting may also be waived if both parties agree to use mediation to solve the issues.

Mediation

If you and the school agree to use mediation instead of the resolution meeting, a non-expedited due process hearing timeline may be extended. However, if either party withdraws from the mediation process during this continuation period, then the 45-calendar day timeline for the due process hearing starts the next day. The Department makes mediation available to parents and schools at no cost through the Mediation Center of the Pacific (MCP). To request mediation, you may:

1. Contact MCP at mcp@mediatehawaii.org or (808) 521-6767 or
2. Submit a Request for Mediation form: <https://bit.ly/MCPmediationrequest>

If all the issues in dispute are resolved during mediation, the party who filed a due process complaint can notify the hearing officer that they would like to withdraw their complaint. The hearing officer will then send all parties an Order of Dismissal.

Pre-Hearing Conference

The assigned hearing officer schedules a pre-hearing conference to review the parties' rights and the procedures for the due process hearing; identify issues to be resolved at the hearing; determine the status of any resolution meeting, mediation, or settlement process; and establish the date(s) and expected length of the due process hearing.

Due Process Hearing Period and Hearing Decision

Impartial hearing officers conduct the due process hearings. The hearing officer may grant specific extensions of time beyond the 45-day hearing period at the request of either party. Unless the party who files the due process complaint withdraws the complaint, the hearing officer will write a decision and share it with both parties by the end of the hearing timeline or adjusted timeline. After the hearing officer issues a decision, either party has 30 days from the decision to file an appeal in a district court of the United States or a State court.

Mahalo,

Complaints Management Program
Monitoring and Compliance Branch
Hawai'i State Department of Education
E-mail: specialcomplaints@k12.hi.us
Phone: (808) 307-3600